

Court of Appeals, State of Michigan

ORDER

Elizabeth Carder v Volunteers of America

Docket No. 259489

LC No. 03-341849-NZ

Kirsten Frank Kelly
Presiding Judge

Kurtis T. Wilder


Christopher M. Murray
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), this Court further orders that the November 15, 2004, order of the Wayne County Circuit Court is VACATED and the matter is REMANDED to the trial court for further explanation of its reasons for denying the motion to dismiss, filed by defendant Volunteers of America, Inc (VOA). Plaintiff apparently served the summons and complaint upon Volunteers of America Michigan, which VOA contends is a separate and distinct corporation. VOA further claimed that it was never served the summons and complaint. Rather than specifically addressing these issues, the trial court stated that it was relying upon its equitable powers and that "VOA Michigan did have notice." Yet, if VOA is a separate and distinct corporation, service on VOA Michigan does not constitute service on VOA, and a complete failure of service on VOA warrants dismissal, despite VOA's knowledge concerning the existence of plaintiff's action. *Holliday v Townley*, 189 Mich App 424, 426; 473 NW2d 733 (1991). See also *In re Gordan Estate*, 222 Mich App 148, 157-158; 564 NW2d 497 (1997).

The Court retains jurisdiction. The trial court shall address these issues on remand and clarify the basis for its denial of the motion to dismiss, on the record within 56 days from the Clerk's certification of this order and shall cause a transcript of any hearing to be prepared and filed within 21 days after completion of the proceedings. Defendant-appellant shall immediately file a copy of the transcript with the Clerk of this Court.

The application for leave and the motion for peremptory reversal are HELD IN ABEYANCE pending the outcome of the remand proceedings.


Presiding Judge



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 22 2005

Date


Chief Clerk